

The Potential impact of Digital Rights Management in the Indian entertainment industry

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Abstract

For India, having being endowed with a rich heritage of art and culture, copyright is perceived to offer great potential rewards. The entertainment industry is one of the fastest growing sectors in the Indian economy. Within this industry the music and film sectors are experiencing an unprecedented boom. At present, India is yet to become a signatory of the WIPO Treaties (WCT and WPPT), but the Indian government has proposed amendments to the extant legislation to incorporate Technological Protection Measures (TPM) and Digital Rights Management (DRM) as enshrined in those treaties.

Conventionally the western entertainment industry has viewed DRM as an important tool to combat piracy pervasive on the internet. DRM involves the application of a set of technical and legal mechanisms that allow copyright owners to control the access to their works, determine the types of permissible uses and terms of such uses and the ultimate distribution of their works in the digital world.

With Indian music and cinema becoming popular abroad, the entertainment industry is attracting increasing foreign investment and is gradually being corporatised. Thus there is a perceived need to protect investments in the industry. DRM is considered to be one of the solutions. It allows right-holders to prevent monetary loss due to unlimited unauthorized reproduction of their works, introduces more effective market segmentation and promotes the incentive to create. Thus, TPM and DRM make it possible for the right-holders to exploit their works to the maximum in the digital world.

However, for a developing economy like India such a path is to be treaded with caution. DRM is an extra-statutory measure, with potential impacts on consumer privacy and innovation, and limiting legitimate exceptions. A unique feature of the Indian entertainment industry is that it is an extension of its dynamic indigenous folk and classical cultural tradition. As this traditional expression has laid greater emphasis on adaptation and improvisation drawing from works in the public domain, its ethos is the antithesis of the concept of a work of art frozen in its original form. It goes against the very grain of the Indian ethos to characterize improvisation as an exploitation of a commercial right. DRM poses a threat to such a tradition by artificially restricting the public domain.

This paper explores the likely impact of the proposed introduction of the DRM provisions in the Indian Copyright Act, 1957 with its focus on the music and film sectors of the Indian entertainment industry. Taking into account the above advantages and disadvantages of DRM, this paper examines these important issues, including the promotion of the underlying objectives of copyright law by trying to attain a balance between individual rights of ownership and use of copyrighted works for societal benefit. Noting that the case for strong copyright protection as a key for innovation is highly debatable, this paper argues that India should keep in mind the 2004 WIPO Development Agenda before adopting the DRM approach.